IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 84 OF 2004

M/s. Ferromar Shipping Pvt. Ltd. ..Appellant

Versus

1. M/s. Aquarius Pvt. Ltd., & Anr. ..Respondent.

Mr. S. R. Rivankar, advocate for the appellants.

Mr. A. D. Bhobe, advocate for respondent no.1.

Mr. Parag S. Rao, advocate for respondent no.2.

CORAM : S. S. PARKAR, J.

DATE : 17th June, 2005.

ORAL ORDER

Heard both sides. The suit filed by the appellants has been dismissed on two grounds, firstly that there is a bar of limitation as the suit was filed after the limitation period of three years, and secondly, negligence on the part of the defendants, who were the carriers, is not proved. As far as the point of limitation is concerned, no doubt the trial Court held the same in favour of the plaintiffs by only observing that the defendant no.2 had not proved that the suit was time barred but the Appeal Court has, after discussing the evidence, held that Article 11 of the Schedule to the Limitation Act, 1963 is applicable, which provides for three years period for filing the suit. The suit was

filed on 10th September, 1987. The goods were admittedly lost because the barge carrying the same had been grounded on 13th June, 1984. From paragraphs 7 and 8 of the plaint itself, it is clear that the plaintiffs were aware of the same on 13th June, 1984 itself, that the barge had grounded. Reliance by the plaintiffs on Article 10 also would not help them, inasmuch as three years had to be counted from the date of losing or injury to the goods which took place on 13th June, 1984, whereas the suit was filed on 10th September, 1987. The reliance placed on Article 113 of the Schedule is misplaced as that applies to a case where the period of limitation is not provided elsewhere in the Schedule which is not the case here. The contention of the appellants that the limitation will commence from 26th December,1986, when the owners of the goods had claimed compensation from the plaintiffs is without any substance.

2. Even as regards the question of negligence, both the courts below have held that negligence was not proved by the plaintiffs. That issue raises question of facts which has been decided on the basis of the evidence led in the trial court and both the courts have held that there was no negligence on the part of the defendants, as the barge had developed a hole in the engine room as a result of which water started entering the engine room with force and flooded the same.

The bailee therefore has discharged the burden cast on him under Section 151 of the Indian Contract Act, 1872, relied upon by the counsel for the appellants.

3. No question of law, much less substantial question of law is involved in the appeal. Hence the appeal is rejected.

S. S. PARKAR, J.

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